IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 1192/2004
Reserved on:
Date of Decision: 23.4.2007

Anakh singh & others. ..Petitioners.

-versus-

Stae of H.P. & others. .. Respondents.

Coram:

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting?* Yes

For the Appellants : Mr.Bhuvnesh Sharma, Advocate.

For the Respondent : Mr. M.S.Chandel, AG with Mr. M.A. Khan, Dy. A.G. and Ms. Meenakshi Sharma, Dy. A.G.

Rajiv Sharma, J. (oral):

Admittedly the land of the petitioner has been used by the respondent-State comprising Khasra No. 40, old khasra No.233 for the construction of road, but no compensation in accordance with law has been paid to them. The only ground to deny the compensation to the petitioners is that the land for the construction of the road was given by the petitioners and other people at the relevant time free of cost and without raising any objection during the construction work of the road.

Mr. Bhuvnesh Sharma, Advocate appearing on behalf of petitioner submits that the case of the petitioners is squarely covered by the judgments in *Jau Ram Vs. State of H.P. ILR. 1984 H.P. 351 and Nokhia and others. Vs. State of H.P. and others, ILR 1984 H.P. 906.*

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* *Whether the reporters of the Local Newspapers may be allowed to see the Judgment? Yes.*

Hon'ble Supreme Court in *State of U.P. Vs. Manohar (2005) 2 Supreme Court Cases 126 h*as held that the property of the citizens can be acquired only in accordance with law. Their Lordships have held as under:

> "The appellants appeared through counsel before the High Court and produced certain records. In view of the correspondence, to which we have referred, between the officers of the State, the High Court came to the conclusion that the case made out by the respondent was acceptable and that the State should be directed to take steps to pay compensation to the petitioner within 3 months with appropriate interest in accordance with the law. The High Court contemptuously dismissed the arguments of the counsel for the appellant that the petitioner had already been paid the compensation but that the records evidencing such payment were not available as they had been "weeded out" due to the delay on the part of the respondent in approaching the court.
>
> As a matter of fact, the appellants were unable to produce even a scrap of evidence indicating that the land of the respondent had been taken over or acquired in any manner known to law or that he had ever been paid any compensation in respect of such acquisition. That the land was thereafter constructed upon, is not denied.
>
> Having heard the learned counsel for the appellants, we are satisfied that the case projected before the court by the appellants is utterly untenable and not worthy of emanating from any State which professes the least regard to being a welfare State. When we pointed out to the learned counsel that, at this stage at least, the State should be gracious enough to accept its mistake and promptly pay the compensation to the respondent, the State has taken an intractable attitude and persisted in opposing what appears to be a just and reasonable claim of the respondent.
>
> Ours is a constitutional democracy and the rights available to the citizens are declared by the Constitution. Although Article 19 (1) (f) was deleted by the Forty-fourth Amendment to the Constitution, Article 300-A has been placed in the Constitution, which reads as follows:

> "300-A. *Persons not to be deprived of property save by authority of law*.- No person shall be deprived of his property save by authority of law."
>
> This is a case where we find utter lack of legal authority for deprivation of the respondent's property by the appellants who are State authorities. In our view, this case was an eminently fit one for exercising the writ jurisdiction of the High Court under Article 226 of the Constitution. In our view, the High Court was somewhat liberal in not imposing exemplary costs on the appellants. We would have perhaps followed suit, but for the intransigence displayed before us."

In the present case also, the respondent-State was unable to produce any evidence indicating that the land of the petitioners had been taken over or acquired in the manner known to law or that the petitioners have ever been paid any compensation in respect of such acquisition.

Thus I am of the considered opinion that once the land of the petitioners has been used for the construction of road, they are entitled to compensation. The land is a property within the meaning of Article 300-A of the Constitution of India and the petitioners cannot be deprived of their right to get compensation for the occupation and use of their land for the construction of road. The respondent-State should avoid taking very hyper technical objections like the delay and laches to deprive the citizens of their valuable right to get the compensation for their land. The land of the citizens is only to be used after taking recourse to law i.e. by initiating proceedings under the Land Acquisition Act, 1894. The respondent-State has not placed any material on record to substantiate their plea that the petitioners have voluntarily given their land free of cost. This aspect of the matter has been gone into detail by this Court in above stated two judgments.

Accordingly the writ petition is allowed and the respondent-State is directed to issue notification under section 4 of the Land Acquisition Act,

1894 within a period of three months and thereafter to complete the entire process within a period of one year.

Needless to add that the petitioners will be held entitled to all the statutory benefits i.e. solatium, interest etc. in accordance with law. There shall be no order to costs.

(Rajiv Sharma), Judge.

April 23, 2007
Awasthi